

§ 954.3

and homeless families with children; and

(2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the grantee before occupancy.

Very low-income family. See 24 CFR part 950.

§ 954.3 Waivers.

Upon determination of good cause, HUD may waive any provision of this part not required by statute. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

§ 954.4 Other Federal requirements.

(a) *Equal opportunity.* (1) *Section 282.* Pursuant to the requirements of Section 282 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12832), no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. In addition, HOME funds must be made available in accordance with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(2) *Civil Rights Act.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, or national origin in the sale or rental of housing, and Executive Order 11063 (27 FR 11527, 3 CFR 1959-1963 Comp., p. 652), which provides for equal opportunity in housing, do not apply to grantees exercising recognized powers of self-government. Indian tribes and tribal organizations applying on behalf of Indian tribes that do not exercise

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recognized powers of self-government must make HOME funds available in accordance with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Executive Order 11063.

(b) *Indian Civil Rights Act.* The Indian Civil Rights Act (title II of the Civil Rights Act of 1968, 25 U.S.C. 1301-1303) provides, among other things, that “no Indian tribe in exercising powers of self-government shall. . . deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.” The Indian Civil Rights Act (ICRA) applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government.

(c) *Indian preference requirements.* (1) *Applicability.* HUD has determined that grants under this part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(i) Preference and opportunities for training and employment shall be given to Indians; and

(ii) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(2) *Definitions.* (i) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) defines “Indian” to mean a person who is a member of an Indian tribe and defines “Indian tribe” to mean any Indian tribe, band, nation, or other organized group or community including any Alaska native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(ii) In section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452) "economic enterprise" is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(3) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

(4) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(i) Each grantee shall:

(A) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(B) Use a two-stage preference procedure, as follows:

(1) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid or proposal announcement limited to Indian-owned firms.

(2) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(C) Develop, subject to area ONAP one-time approval, the grantee's own method of providing preference.

(ii) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(A) Re-bid the contract, using any of the methods described in paragraph (d)(1) of this section; or

(B) Re-bid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(C) If one approvable bid is received, request area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(iii) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(iv) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation and the bidding or proposal documents.

(v) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(A) Evidence showing fully the extent of Indian ownership and interest;

(B) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(C) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(vi) The grantee shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(A) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance

Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible preferences and opportunities for training and employment shall be given to Indians, and preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(B) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(C) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(D) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(5) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods enacted and approved in a manner described in this section.

(i) Each complaint shall be in writing, signed, and filed with the grantee.

(ii) A complaint must be filed with the grantee no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(iii) Upon receipt of a complaint, the grantee shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(iv) Within 20 calendar days of receipt of a complaint, the grantee shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The grantee shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the grantee. The decision of the grant-

ee shall constitute final administrative action on the complaint.

(d) *Environmental review.* The Indian tribe must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. The grantee shall also be responsible for compliance with flood insurance, coastal barrier resource and airport clear zone requirements under 24 CFR 58.6.

(e) *Displacement, relocation, and acquisition.* (1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the grantee must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(2) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(ii) Appropriate advisory services, including reasonable advance written notice of—

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(D) The provisions of paragraph (e)(2)(i) of this section.

(3) *Relocation assistance for displaced persons.* (i) *General.* A displaced person (defined in paragraph (e)(3)(ii) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24.

(ii) *Displaced Person.* (A) For purposes of paragraph (c) of this section, the term *displaced person* means a person (family individual, business, private nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(1) After notice by the owner to move permanently from the property, if the move occurs on or after:

(i) The date of the submission of an application to the grantee or HUD, if the applicant has site control and the application is later approved; or

(ii) The date the grantee approves the applicable site, if the applicant does not have site control at the time of the application; or

(2) Before the date described in paragraph (e)(3)(ii)(A)(1) of this section, if the grantee or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(3) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(i) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility

costs that do not exceed the greater of: the tenant's monthly rent before such agreement and estimated average monthly utility costs; or the total tenant payment, as determined under 24 CFR part 5, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(ii) The tenant is required to relocate temporarily, does not return to the building/complex, and either: the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or other conditions of the temporary relocation are not reasonable; or

(iii) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(B) Notwithstanding paragraph (e)(3)(ii)(A) of this section, a person does not qualify as a *displaced person* if:

(1) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal or tribal law (or state law, which may apply if the grantee is not exercising recognized powers of self-government), or other good cause, and the grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.

(2) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;

(3) The person is ineligible under 49 CFR 24.2(g)(2); or

(4) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(C) The grantee may, at any time, ask HUD to determine whether a displacement is or would be covered by this part.

(iii) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (e)(3) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(4) *Optional relocation assistance.* The grantee may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (e)(3) of this section. The grantee may also provide relocation assistance to persons covered under paragraph (e)(3) of this section beyond that required. For any such assistance that is not required by tribal law (or state law, which may apply if the grantee is not exercising recognized powers of self-government), the grantee must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(5) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(6) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the grantee.

(7) *Responsibility of grantee.* (i) The grantee must certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of

this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply.

(ii) The cost of required relocation assistance is an eligible project cost. This cost also may be paid from tribal funds, or funds available from other sources.

(f) *Labor.* (1) *General.* (i) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (42 CFR 327-332).

(ii) The contract for construction must contain these wage provisions if HOME funds are used for any project costs (as defined in subpart C of this part), including construction or non-construction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project phase is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single

project for the purpose of avoiding the wage provisions is not permitted.

(iii) Grantees, contractors, sub-contractors, and other participants must comply with regulations issued under these Acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development programs), as applicable. Grantees must require certification as to compliance with the provisions of this section before making any payment under such contract.

(2) *Volunteers.* The prevailing wage provisions of paragraph (f)(1) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(3) *Sweat equity.* The prevailing wage provisions of paragraph (f)(1) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

(4) *Force account.* (i) The grantee is responsible for compliance with regulatory requirements in the use of grantee work forces for construction or renovation activities performed as part of the activities funded under this part. The grantee must provide for its files the following:

(A) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(B) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be used;

(C) Information showing that the workers to be used are, or will be, listed on the grantee payroll and are employed directly by the grantee.

(ii) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part or returned to HUD promptly.

(iii) Insurance coverage for force account workers and activities shall, where applicable, include worker's compensation, public liability, property damage, builder's risk, and vehicular liability.

(iv) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(v) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section.

(vi) In force account there is no contract. If the grantee which has received the HOME grant to construct the housing units performs the construction work using force account, i.e., with its own employees, the work is not covered by Davis-Bacon and related Acts. If the grantee contracts out the work or part of the work, that work is covered.

(g) *Lead-based paint.* Housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Grantees are responsible for testing and abatement activities.

(h) *Conflict of interest.* (1) *Applicability.* (i) The conflict of interest provisions in 24 CFR part 84 and 24 CFR 85.36 apply to the procurement of supplies, equipment, construction, and services by grantees and their subgrantees.

(ii) The provisions of this section apply to all cases not governed by 24 CFR part 84 and 24 CFR 85.36. These cases include the acquisition and disposition of real property and the provision of assistance by the grantee, by subgrantees, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).

(2) *Conflicts prohibited.* The general rule is that no persons described in paragraph (h)(3) of this section who have or had any functions or responsibilities with respect to activities assisted under this part, or who are in a position to participate in a decision, or

gain inside information about such activities, may obtain a financial interest or benefit from these activities. Further, these persons may not have an interest in any contract, sub-contract, or agreement concerning such activities; and these persons may not, during their employment or tenure in office and for one year thereafter, have an interest in the proceeds from these activities, either for themselves or for those with whom they have family or business ties. This paragraph does not apply to approved eligible administrative or personnel costs.

(3) *Persons covered.* The conflict of interest provisions of paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or subgrantee receiving HOME funds.

(4) *Exceptions requiring HUD approval.*

(i) *Threshold requirements.* Upon the written request of a grantee, HUD may grant an exception to the provisions of paragraph (h)(2) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the HOME program and the effective and efficient administration of the grantee's project. An exception may be considered only after the grantee has provided the following:

(A) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(B) An opinion of the grantee's attorney that the interest for which the exception is sought would not violate tribal laws on conflict of interest (or State law on conflict of interest, which may apply if the grantee is not exercising recognized powers of self-government).

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the grantee has satisfactorily met the requirements of paragraph (h)(4)(i) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(A) Whether the exception would provide a significant cost benefit or essen-

tial expert knowledge to the project which would otherwise not be available;

(B) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(C) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(2) of this section;

(D) Whether undue hardship will result, either to the grantee or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and

(E) Any other relevant considerations.

(5) *Circumstances under which the conflict prohibition does not apply.* (i) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of tribal (or State) laws on conflict of interest would result, the prohibition does apply.

(ii) A public disclosure of the nature of the grant assistance to be provided and the specific basis for the selection of the proposed beneficiaries must be made prior to the submission of an application to HUD. Evidence of this disclosure must be provided as a component of the application.

(i) *Debarment and suspension.* As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., sub-contractors) to include the certification in appendix B of 24 CFR part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier transactions. A grantee may rely on the certification, unless it knows the certification is erroneous.